

From: Jerry Valdez [REDACTED]
Sent: Tuesday, June 5, 2018 6:58 AM
To: Hughs,Ruth R <ruth.hughs@twc.state.tx.us>
Cc: Bergmann,Kimberly <kimberly.bergmann@twc.state.tx.us>
Subject: Re: FW: Handy: TX

hi Kim - Good Morning.

how about afternoon, sometime. maybe 1-4pm timeframe?

please advise. thank you. once confirmed, I will send out calendar item with call in info.

Jerry Valdez

512-477-1117 Office

512-694-7611 Mobile

Mailing Address

P.O. Box 12031

Austin, Texas 78711

Physical Address

816 Congress Avenue, Ste. 1125

Austin, Texas 78701

On Mon, Jun 4, 2018 at 5:52 PM, Jerry Valdez [REDACTED] wrote:

let's try for a pre call with Kim.

let me round my folks in and be in touch.

Kim

what is better ? morning or afternoon ?

On Mon, Jun 4, 2018 at 4:54 PM Hughs,Ruth R wrote:

Hi Jerry. I'm at the Army War College this week with limited reception. I can ask my staff to cover or we can set something up for the next week. let me know your preference. I am copying Kim to coordinate.

Any updates on the status of the legislation in other states? I did see some states have laws kicking in this summer.

From: Jerry Valdez [REDACTED]

Sent: Monday, June 4, 2018 12:12:25 PM

To: Hughs,Ruth R

Subject: Re: FW: Handy: TX

any chance we could hop on a call on Wednesday?

On Wed, May 23, 2018 at 4:20

Thank you for this list of litigation involving handy. What I was hoping to see was what legislation Handy has pursued in other states and what the status of that legislation is at this point? Also, is the legislative effort to have workers classified as independent contractors only, or to include a benefits contribution as well as IC status (I think that is what they were seeking in NY, not sure if sought in other states or not)? Hope this makes sense. Look forward to hearing back soon. Thanks!

Ruth R. Hughs

Commissioner Representing Employers

Texas Workforce Commission

101 E. 15th Street

Austin, Texas 78778-0001

Subject: Fwd: FW: Handy: TX

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pleased see attached, per our email exchange.

also, please let me know what day would work for us to visit by phone.

thank you very much.

Jerry Valdez

[REDACTED]

--
Jerry Valdez

[REDACTED]
512-694-7611
512-477-1117

Jerry Valdez

512-694-7611

512-477-1117

--

Jerry Valdez

512-694-7611

512-477-1117

Simmons,Tommy

From: Mackenna Wehmeyer [REDACTED]
Sent: Monday, June 11, 2018 2:46 PM
To: Simmons,Tommy; Bergmann,Kimberly; Owens,Brian
Subject: Tusk Strategies-Federal Unemployment Tax Act Information
Attachments: FUTA summary TX.docx; 20180611115758613[1].pdf

CAUTION: Email not from TWC System. Use care when clicking links and opening attachments.

Hello All,

My name is Mackenna Wehmeyer, I work with Jerry Valdez. As you may know, Jerry is out of the country, so I am the point person in his absence. Attached is the information requested during the call with Tusk Strategies regarding the Federal Unemployment Tax Act. They asked that I pass it along.

Please let me know if you have any further questions or concerns.

Thanks!

Best,
Mackenna Head Wehmeyer
[REDACTED]

512-657-7174

On-Demand Sector Proposal: FUTA Compliance

I. In 2016, the USDOL stated that the language in the Arizona statute complied with FUTA requirements

In 2016, the Arizona state legislature considered and then enacted legislation that created a new classification test for the on-demand sector. *See Ariz. Rev. Stat. § 23-1603* (attached). While that legislation was still pending in the legislature, the USDOL raised questions regarding FUTA compliance.

FUTA requires that state unemployment compensation laws cover services performed for (a) state and local government entities and (b) certain charitable entities. These two categories are defined in FUTA section 3306(c)(7) and (8). To ensure that the bill was consistent with FUTA's requirements, the Arizona bill was amended to expressly provide that the new provision would not apply to these two categories of services. The bill was amended to state:

D. This section does not apply to:

1. Service performed in the employ of a state, or any political subdivision of the state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one or more states or political subdivisions or Indian tribes, provided that such service is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 and 3306(c)(7)).
2. Service performed in the employ of a religious, charitable, educational or other organization that is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 through 3311), solely by reason of 26 United States Code section 3306(c)(8).

Ariz. Rev. Stat. § 23-1603(D).

Following the amendment, the USDOL stated that “this latest version of the bill ... does not conflict with Federal UC law as long as the amended language is included to exempt state and local governmental entities, Indian tribes, and non-profit organizations from the provisions of the bill.” The relevant email string is attached.

II. The Amended Proposal Includes Provisions to Ensure Compliance with FUTA

Texas' Unemployment Compensation Act includes provisions to ensure compliance with these FUTA requirements. *See, e.g., V.T.C.A., Labor Code §§ 201.025, 201.026, 201.048.* In light of these statutory provisions, the proposal did not include the same language found in the Arizona statute.

However, in order to avoid confusion and ensure that the proposal would not create any risk of FUTA noncompliance, we revised the proposal to include the same type of provision found in the Arizona statute. *See below.*

Proposal (Amended)

40 Tex. Admin. Code § 821.x. Employment Status: Marketplace Contractor

(a) For purposes of this section:

- (i) The term “marketplace platform” means a corporation, partnership, sole proprietorship, or other entity operating in this state that:
 - (A) uses a digital network to connect marketplace contractors to third party individuals or entities seeking the type of services offered by the marketplace contractors; and
 - (B) accepts service requests from the public only through its digital network, and does not accept service requests by telephone, by facsimile or in person at physical retail locations.
- (ii) The term “marketplace contractor” or “contractor” shall mean any individual, corporation, partnership, sole proprietorship, or other entity that enters into an agreement with a marketplace platform to use the platform’s digital network to receive connections to third party individuals or entities seeking the type of services offered by the marketplace contractor.

(b) A marketplace contractor shall be treated as an independent contractor, and not an employee, of the marketplace platform if all of the following conditions are met:

- (i) The marketplace platform and marketplace contractor agree in writing that the contractor is an independent contractor with respect to the marketplace platform;
- (ii) That all or substantially all of the payment paid to the contractor shall be based on the performance of services or other output;
- (iii) The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third party individuals or entities submitted through the marketplace platform’s online-enabled application, software, web site, or system;
- (iv) The marketplace platform does not prohibit the marketplace contractor from using any online-enabled application, software, web site, or system offered by other marketplace platforms;
- (v) The marketplace platform does not restrict the contractor from engaging in any other occupation or business;
- (vi) The marketplace contractor bears all or substantially all of the contractor’s own expenses that are incurred by the contractor in performing the services;
- (vii) The marketplace contractor is responsible for providing the necessary tools, materials, and equipment to perform the services;
- (viii) The marketplace platform does not provide on-site supervision during the performance of the services by the contractor; and
- (ix) The marketplace platform does not require the contractor to attend mandatory meetings or mandatory training.

(c) This section does not apply to:

- (i) Service performed in the employ of a state, or any political subdivision of the state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one or more states or political subdivisions or Indian tribes, provided that such service is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 and 3306(c)(7)).
- (ii) Service performed in the employ of a religious, charitable, educational or other organization that is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 through 3311), solely by reason of 26 United States Code section 3306(c)(8).

Ariz. Rev. Stat. § 23-1603

Effective: August 6, 2016

A.R.S. § 23-1603

§ 23-1603. Qualified marketplace contractors; definitions

A. A qualified marketplace contractor shall be treated as an independent contractor for all purposes under state and local laws, regulations and ordinances, including employment security laws prescribed in chapter 4 of this title¹ and workers' compensation laws prescribed in chapter 6 of this title,² if all of the following apply:

1. All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.
2. The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform.
3. The written contract required by paragraph 2 of this subsection provides for all of the following:
 - (a) That the qualified marketplace contractor is providing services as an independent contractor and not as an employee.
 - (b) That, pursuant to paragraph 1 of this subsection, all or substantially all of the payment paid to the contractor shall be based on the performance of services or other output.
 - (c) That the qualified marketplace contractor is allowed to work any hours or schedules the qualified marketplace contractor chooses. If the qualified marketplace contractor elects to work specified hours or schedules, a contract may require the qualified marketplace contractor to perform work during the selected hours or schedules.
 - (d) That the qualified marketplace contract does not restrict the contractor's ability to perform services for other parties.
 - (e) That the qualified marketplace contractor bears all or substantially all of the qualified marketplace contractor's own expenses that are incurred by the qualified marketplace contractor in performing the services.
 - (f) That the qualified marketplace contractor is responsible for the taxes on the qualified marketplace contractor's own income.
 - (g) That the contract and the association created by the contract may be terminated without cause by either party to the contract at any time on reasonable notice given to the other party.

B. For services performed by a qualified marketplace contractor before August 6, 2016, the qualified marketplace contractor shall be treated as an independent contractor for all purposes under state and local laws, regulations and ordinances, including employment security laws prescribed in chapter 4 of this title and workers' compensation laws prescribed in chapter 6 of this title, if both of the following apply:

1. All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.

2. The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform that conforms to the requirements of subsection A, paragraph 3 of this section.

C. Compliance with this section is not mandatory in order to establish the existence of an independent contractor relationship. The exclusion of any contractor or digital platform from this section does not create any presumptions and is not admissible to deny the existence of an independent contractor relationship.

D. This section does not apply to:

1. Service performed in the employ of a state, or any political subdivision of the state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one or more states or political subdivisions or Indian tribes, provided that such service is excluded from employment as defined in the federal unemployment tax act (26 United States Code §§ 3301 and 3306(c)(7)).
2. Service performed in the employ of a religious, charitable, educational or other organization that is excluded from employment as defined in the federal unemployment tax act (26 United States Code §§ 3301 through 3311), solely by reason of 26 United States Code § 3306(c)(8).

E. For the purposes of this section:

1. “Qualified marketplace contractor” means any person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor or other entity, that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital platform to provide services to third-party individuals or entities seeking those services. Qualified marketplace contractor does not include any contractor when the services performed consist of transporting freight, sealed and closed envelopes, boxes or parcels or other sealed and closed containers for compensation.
2. “Qualified marketplace platform” means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor or any other entity, that both:
 - (a) Operates a digital website or digital smartphone application that facilitates the provision of services by qualified marketplace contractors to individuals or entities seeking such services.
 - (b) Accepts service requests from the public only through its digital website or digital smartphone application, and does not accept service requests by telephone, by facsimile or in person at physical retail locations.Qualified marketplace platform does not include any digital website or smartphone application where the services facilitated consist of transporting freight, sealed and closed envelopes, boxes or parcels or other sealed and closed containers for compensation.

Credits

Added as § 23-1601 by Laws 2016, Ch. 210, § 1. Renumbered as § 23-1603.

From: Grant Hanna <GHanna@azleg.gov>
Date: April 8, 2016 at 12:16:18 PM PDT
To: Melissa Taylor <MTaylor@azleg.gov>, Wendy Briggs [REDACTED], Rene Guillen <rguillen@az.gov>, "Kathy A. Ber" <kber@azdes.gov>, "Elizabeth Dunfee" <EDunfee@azleg.gov>, [REDACTED]>
Subject: FW: HB 2652 - USDOL conformity issue

DOL determination below.

From: Smith, Sherry L - ETA<mailto:Smith.Sherry.l@DOL.GOV>
Sent: 4/8/2016 11:52 AM
To: Grant Hanna<mailto:GHanna@azleg.gov>
Subject: FW: HB 2652 - USDOL conformity issue

FYI. Please see email below. If you have any additional questions please let me know.

Regards,

Sherry L. Smith, MBA, MSM
Unemployment Insurance Program Specialist
U.S. Department of Labor
Employment and Training Administration
Region 6, San Francisco
90 7th Street, Suite 17-100
San Francisco, CA 94103
Phone: (415) 625-7982
Fax: (415) 625-7923
Email: smith.sherry.l@dol.gov<mailto:smith.sherry.l@dol.gov>

From: McGucken, John - ETA
Sent: Friday, April 08, 2016 11:49 AM
To: Smith, Sherry L - ETA
Subject: FW: HB 2652 - USDOL conformity issue

Sherry,

Bob and I have reviewed this latest version of the bill and agree that it does not conflict with Federal UC law as long as the amended language is included to exempt state and local governmental entities, Indian tribes, and non-profit organizations from the provisions of the bill.

However, as noted in our letter, if the IRS determines the individuals are employees, the employer would be required to pay the full FUTA tax and not be eligible for a credit because no state contributions would have been paid on the wages.

From: Smith, Sherry L - ETA
Sent: Friday, April 08, 2016 1:59 PM
To: McGucken, John - ETA
Cc: Grant Hanna (GHanna@azleg.gov<mailto:GHanna@azleg.gov>)
Subject: FW: HB 2652 - USDOL conformity issue

Hello John,

Please see attached – thank you.

Sherry L. Smith, MBA, MSM
Unemployment Insurance Program Specialist
U.S. Department of Labor
Employment and Training Administration
Region 6, San Francisco
90 7th Street, Suite 17-100
San Francisco, CA 94103
Phone: [\(415\) 625-7982](tel:(415)625-7982)
Fax: [\(415\) 625-7923](tel:(415)625-7923)
Email: smith.sherry.l@dol.gov<mailto:smith.sherry.l@dol.gov>

From: Grant Hanna [mailto:GHanna@azleg.gov]
Sent: Friday, April 08, 2016 10:53 AM
To: Smith, Sherry L - ETA
Cc: Ber, Kathy, A; Melissa Taylor; Elizabeth Dunfee; Rene Guillen; Wendy Briggs; Marilyn Purvis
Subject: RE: HB 2652 - USDOL conformity issue

Good morning Sherry,

Thank you for your call this morning. I appreciate the level of certainty DOL has provided by the reference to the compliant Oklahoma law<https://www.ok.gov/oesc_web/documents/OESCAct.pdf>. I've compared this statute to the proposed amendment I sent you yesterday (attached) and believe our language, based on compliant Ohio Code<<http://codes.ohio.gov/orc/4141.01>>, is substantively consistent.

From John McGucken email below:

This is the language Oklahoma has offered to add to a similar bill and would take care of the issue raised in our letter. Note: It cites to the AZ law and they would need to be substituted. Hope this helps.

(E) This section shall not apply to the services provided by qualified market place contractors when the services are performed for governmental entities as provided for in 40 O.S. Sec. 1-210(3), non-profit entities as provided for in 40 O.S. Sec. 1-210(4), or Indian tribal entities as provided for in 40 O.S. Sec. 1-108.

Comparison of Oklahoma (E) and HB 2652 proposed amendment:

1. This section shall not apply to the services provided by qualified market place contractors when the services are performed for governmental entities as provided for in 40 O.S. Sec. 1-

210(3)

40 O.S. Sec. 1-210(3): Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(c) (7)

HB 2652: SERVICE PERFORMED IN THE EMPLOY OF A STATE, OR ANY POLITICAL SUBDIVISION THEREOF, OR IN THE EMPLOY OF AN INDIAN TRIBE, OR ANY INSTRUMENTALITY OF ANY ONE OR MORE OF THE FOREGOING WHICH IS WHOLLY OWNED BY ONE OR MORE STATES OR POLITICAL SUBDIVISIONS OR INDIAN TRIBES, PROVIDED THAT SUCH SERVICE IS EXCLUDED FROM EMPLOYMENT AS DEFINED IN THE "FEDERAL UNEMPLOYMENT TAX ACT," 53 STAT. 183, 26 U.S.C.A. 3301, 3306(C)(7)

2. non-profit entities as provided for in 40 O.S. Sec. 1-210(4)

40 O.S. Sec. 1-210 (4) Service performed by an individual in the employ of a community chest, fund, foundation or corporation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office; provided that such organization had four or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the calendar year or preceding calendar year, regardless of whether they were employed at the same moment of time.

HB 2652: (3) SERVICE PERFORMED IN THE EMPLOY OF A RELIGIOUS, CHARITABLE, EDUCATIONAL, OR OTHER ORGANIZATION THAT IS EXCLUDED FROM THE TERM "EMPLOYMENT" AS DEFINED IN THE "FEDERAL UNEMPLOYMENT TAX ACT," 84 STAT. 713, 26 U.S.C.A. 3301 TO 3311, SOLELY BY REASON OF SECTION 26 U.S.C.A. 3306(C)(8) OF THAT ACT.

Analysis: Oklahoma 40 O.S. Sec. 1-210 (4) codifies the definition of a 501(c)3 in 26 U.S. Code § 501 (c) 3<<https://www.law.cornell.edu/uscode/text/26/501>>. HB 2652 references the definition of nonprofit in U.S.C.A 3306 (C)(8): "service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3)"

3. Indian tribal entities as provided for in 40 O.S. Sec. 1-108

40 O.S. Sec. 1-108: The term "employment" shall include service performed in the employ of an Indian tribe, as defined in the Federal Unemployment Tax Act (FUTA), 26 U.S.C., Section 3306(u), provided such service is excluded from "employment" as defined in FUTA solely by reason of 26 U.S.C., Section 3306(c)(7)

HB 2652: SERVICE PERFORMED IN THE EMPLOY OF A STATE, OR ANY POLITICAL SUBDIVISION THEREOF, OR IN THE EMPLOY OF AN INDIAN TRIBE, OR ANY INSTRUMENTALITY OF ANY ONE OR MORE OF THE FOREGOING WHICH IS WHOLLY OWNED BY ONE OR MORE STATES OR POLITICAL SUBDIVISIONS OR INDIAN TRIBES, PROVIDED THAT SUCH SERVICE IS EXCLUDED FROM

EMPLOYMENT AS DEFINED IN THE "FEDERAL UNEMPLOYMENT TAX ACT," 53 STAT. 183, 26 U.S.C.A. 3301, 3306(C)(7);

I ultimately defer to the Arizona Department of Economic Security but would appreciate any DOL determinations that could be provided to this agency.

Grant Hanna
Legislative Research Analyst
Senate Commerce & Workforce Development Committee
1700 W. Washington
Phoenix, AZ 85007
O: 602.926.3171

From: Smith, Sherry L - ETA [mailto:Smith.Sherry.I@DOL.GOV]
Sent: Friday, April 08, 2016 9:46 AM
To: Grant Hanna
Subject: FW: HB 2652 - USDOL conformity issue

Good Morning,

Please see the message below. If you have any additional questions or need further clarification, please let me know.

Regards,

Sherry L. Smith, MBA, MSM
Unemployment Insurance Program Specialist
U.S. Department of Labor
Employment and Training Administration
Region 6, San Francisco
90 7th Street, Suite 17-100
San Francisco, CA 94103
Phone: (415) 625-7982
Fax: (415) 625-7923
Email: smith.sherry.I@dol.gov<<mailto:smith.sherry.I@doj.gov>>

From: McGucken, John - ETA
Sent: Friday, April 08, 2016 4:59 AM
To: Smith, Sherry L - ETA
Cc: Johnston, Robert - ETA
Subject: RE: HB 2652 - USDOL conformity issue

Sherry,

This is the language Oklahoma has offered to add to a similar bill and would take care of the issue raised in our letter. Note: It cites to the AZ law and they would need to be substituted. Hope this helps.

(E) This section shall not apply to the services provided by qualified market place contractors when the services are performed for governmental entities as provided for in 40 O.S. Sec. 1-210(3), non-profit entities as provided for in 40 O.S. Sec. 1-210(4), or Indian tribal entities as

provided for in 40 O.S. Sec. 1-108.

From: Smith, Sherry L - ETA
Sent: Wednesday, April 06, 2016 12:42 PM
To: McGucken, John - ETA
Subject: FW: HB 2652 - USDOL conformity issue

From: Grant Hanna [mailto:GHanna@azleg.gov]
Sent: Wednesday, April 06, 2016 9:22 AM
To: Smith, Sherry L - ETA
Subject: FW: HB 2652 - USDOL conformity issue

Good morning Ms. Smith,

Could you please give me a call at (602) 926-3216? This bill is going to the floor today and I am hoping to remedy this issue with an amendment. Thank you!

Grant Hanna
Legislative Research Analyst
Senate Commerce & Workforce Development Committee
1700 W. Washington
Phoenix, AZ 85007
O: 602.926.3171
From: Ber, Kathy, A [mailto:Kber@azdes.gov]
Sent: Wednesday, April 06, 2016 8:37 AM
To: Melissa Taylor
Cc: Grant Hanna
Subject: Fwd: HB 2652 - USDOL conformity issue

FYI

Sent from my iPhone

Begin forwarded message:

From: "Ber, Kathy, A" <Kber@azdes.gov<<mailto:Kber@azdes.gov>>>
Date: April 6, 2016 at 8:35:45 AM MST
To: Representative Jill Norgaard <jnorgaard@azleg.gov<<mailto:jnorgaard@azleg.gov>>>
Cc: Travis Swallow <tswallow@azleg.gov<<mailto:tswallow@azleg.gov>>>, Diana Clay
<dclay@azleg.gov<<mailto:dclay@azleg.gov>>>
Subject: HB 2652 - USDOL conformity issue
Good morning Representative Norgaard,

DES received the attached letter from the US Department of Labor regarding HB 2652. They state that the bill is not in conformity with federal unemployment insurance laws and regulations. As you may be aware, if legislation that is not in conformity is enacted the state could lose its federal unemployment insurance funding and employers Federal Unemployment

Tax Act (FUTA) tax credits.

The Department is reviewing the letter at this time.

Please let me know if you have any questions.

Kathy Seeglitz Ber
Legislative Director
Arizona Department of Economic Security
Main: [\(602\) 542-4669](tel:(602)%20542-4669) | Direct: [\(602\) 542-2548](tel:(602)%20542-2548)
| Mobile: [\(602\) 540-9018](tel:(602)%20540-9018)
www.azdes.gov

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Simmons,Tommy

From: Simmons,Tommy
Sent: Monday, June 11, 2018 4:44 PM
To: Mackenna Wehmeyer; Bergmann,Kimberly; Owens,Brian
Subject: RE: Tusk Strategies-Federal Unemployment Tax Act Information
Attachments: FUTA summary TX.DOCX; 20180611115758613[1].pdf

Dear Ms. Wehmeyer,

Thank you very much for referring that information to us. I am sure it will be informative regarding the matters discussed.

Sincerely,

Tommy Simmons
Senior Legal Counsel to Commissioner Ruth R. Hughs
Commissioner Representing Employers
Texas Workforce Commission
tommy.simmons@twc.state.tx.us
Toll-free: 1-800-832-9394
Direct: 1-512-463-2967
Book: <http://www.twc.state.tx.us/news/efte/tocmain.html>
Web app: <http://texasworkforce.org/tbcapp>

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From: Mackenna Wehmeyer [REDACTED]
Sent: Monday, June 11, 2018 2:46 PM
To: Simmons,Tommy <tommy.simmons@twc.state.tx.us>; Bergmann,Kimberly <kimberly.bergmann@twc.state.tx.us>; Owens,Brian <brian.owens@twc.state.tx.us>
Subject: Tusk Strategies-Federal Unemployment Tax Act Information

Hello All,

My name is Mackenna Wehmeyer, I work with Jerry Valdez. As you may know, Jerry is out of the country, so I am the point person in his absence. Attached is the information requested during the call with Tusk Strategies regarding the Federal Unemployment Tax Act. They asked that I pass it along.

Please let me know if you have any further questions or concerns.

Thanks!

Best,
Mackenna Head Wehmeyer
[REDACTED]

512-657-7174

Simmons,Tommy

From: Jerry Valdez [REDACTED]
Sent: Wednesday, June 6, 2018 1:13 PM
To: Simmons,Tommy; Owens,Brian
Subject: Illinois Regulatory Language
Attachments: Handy Illinois.Omega - summary of IDOL proposal for TX.docx

CAUTION: Email not from TWC System. Use care when clicking links and opening attachments.

Jerry Valdez

[REDACTED]

512-477-1117 Office
512-694-7611 Mobile

Mailing Address
P.O. Box 12031
Austin, Texas 78711

Physical Address
816 Congress Avenue, Ste. 1125
Austin, Texas 78701

In addition to pushing for administrative guidance in Texas, Handy is also supportive of a similar proposal in Illinois. Both proposals are generally based on an Arizona statute that was enacted in 2016, but include additional provisions to ensure that they clearly fall within the broad outlines of each state's labor laws.

The Illinois proposal is intended to cover the employee classification tests under the Illinois Minimum Wage Act. This statute require consideration of many of the same factors as detailed in the Arizona statute and the Texas administrative proposal, although there are some differences among these laws, which the proposals account for. Similar to the Texas proposal, the Illinois proposal is being evaluated by the relevant state agency, the Illinois Department of Labor.

All but one¹ of the factors included in the Texas proposal are also included in the Illinois proposal. The Illinois proposal includes the following additional factors to account for variations in Illinois labor law.

1. The marketplace platform does not require contractors to use specific supplies or equipment;
2. The marketplace platform does not require the contractor to wear a uniform or specific attire;
3. The contract between the marketplace platform and the marketplace contractor may not exceed one year, provided that the parties may enter into one or more renewals provided that the renewal does not exceed one year in duration;
4. The marketplace contractor is responsible for the taxes on the contractor's own income.

In short, the proposals seek to accomplish the same goal. However, the tests included in the Texas and Illinois proposals include some different factors to account for the specific requirements of state law.

¹ The marketplace contractor bears all or substantially all of the contractor's own expenses that are incurred by the contractor in performing the services;

IDOL Proposal

56 Ill. Admin. Code § XXX. Employment Status: Marketplace Contractor

(a) For purposes of this section:

- (i) The term “marketplace platform” means a corporation, partnership, sole proprietorship, or other entity operating in this state that:
 - (A) uses a digital network to connect marketplace contractors to third party individuals or entities seeking the type of services offered by the marketplace contractors; and
 - (B) accepts service requests from the public only through its digital network and does not accept service requests by telephone, facsimile, or in person at physical retail locations.
- (ii) The term “marketplace contractor” or “contractor” shall mean any individual, corporation, partnership, sole proprietorship, or other entity that enters into an agreement with a marketplace platform to use the platform’s digital network to connect with third-party individuals or entities seeking the type of services offered by the marketplace contractor.

(b) For purposes of the Minimum Wage Act, a marketplace contractor shall be treated as an independent contractor, and not an employee of the marketplace platform if all of the following conditions are met:

- (i) The marketplace platform and marketplace contractor agree in writing that the contractor is an independent contractor with respect to the marketplace platform;
- (ii) The marketplace platform does not require the marketplace contractor to accept specific tasks or jobs or otherwise unilaterally prescribe specific days or hours during which the contractor must be available to accept service requests;
- (iii) The marketplace platform does not prohibit the marketplace contractor from using any system offered by other marketplace platforms, or from engaging in any other occupation or business;
- (iv) All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.
- (v) The marketplace contractor is responsible for providing the necessary tools, materials, and equipment to perform the services;
- (vi) The marketplace platform does not require contractors to use specific supplies or equipment;
- (vii) The marketplace platform does not directly supervise the performance of the services by the contractor;
- (viii) The marketplace platform does not require the contractor to attend mandatory meetings or mandatory training.
- (ix) The marketplace platform does not require the contractor to wear a uniform or specific attire;
- (x) The contract between the marketplace platform and the marketplace contractor may not exceed one year, provided that the parties may enter into one or more renewals provided that the renewal does not exceed one year in duration;
- (xi) The marketplace contractor is responsible for the taxes on the contractor’s own income.